

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5**

<b>In the Matter of:</b>	)	<b>EPA-5-20-113(a)-COE-03</b>
	)	
<b>Cohen Brothers, Inc.</b>	)	<b>Proceeding Under Sections 113(a)(1)(3) and</b>
<b>Middletown, Ohio</b>	)	<b>114(a)(1) of the Clean Air Act, 42 U.S.C.</b>
	)	<b>§§ 7413(a)(1)(3) and 7414(a)(1)</b>
	)	

**Administrative Consent Order**

1. The Director of the Enforcement and Compliance Assurance Division, U.S. Environmental Protection Agency (EPA), Region 5, is issuing this Order to Cohen Brothers, Inc. (Cohen) under Sections 113(a)(1)(3) and 114(a)(1) of the Clean Air Act (CAA), 42 U.S.C. §§ 7413(a)(1)(3) and 7414(a)(1).

**Statutory and Regulatory Background**

2. Pursuant to Section 608 of the CAA, 42 U.S.C. § 7671g, EPA promulgated regulations at 40 C.F.R. Part 82, Subpart F, applicable to recycling and emissions reductions of ozone-depleting substances.

3. 40 C.F.R. Part 82, Subpart F applies to persons disposing of appliances, including small appliances and motor vehicle air conditioners.

4. The purpose of 40 C.F.R. Part 82, Subpart F is to reduce emissions of class I and class II refrigerants and their non-exempt substitutes to the lowest achievable level during the service, maintenance, repair, and disposal of appliances. *See* 40 C.F.R. § 82.150(a).

5. Under 40 C.F.R. § 82.152, a “person” means, among other things, any individual or legal entity, including an individual, corporation, partnership, association and any officer, agent, or employee thereof.

6. Under 40 C.F.R. § 82.152, an “appliance” is any device which contains and uses a class I or class II substance or substitute as a refrigerant and which is used for household or commercial purposes, including any air conditioner, motor vehicle air conditioner (MVAC), refrigerator, chiller, or freezer. For a system with multiple circuits, each independent circuit is considered a separate appliance.

7. Under 40 C.F.R. § 82.152, an “MVAC” is an appliance that is a motor vehicle air conditioner as defined in 40 C.F.R. § 82.32(d), which states that MVAC “means mechanical vapor compression refrigeration equipment used to cool the driver's or passenger's compartment of any motor vehicle. This definition is not intended to encompass the hermetically sealed refrigeration systems used on motor vehicles for refrigerated cargo and the air conditioning systems on passenger buses using HCFC-22 refrigerant.”

8. Under 40 C.F.R. § 82.152, an “MVAC-like appliance” is a mechanical vapor compression, open-drive compressor appliance with a full charge of 20 pounds or less of refrigerant used to cool the driver's or passenger's compartment of off-road vehicles or equipment. This includes, but is not limited to, the air-conditioning equipment found on agricultural or construction vehicles. This definition is not intended to cover appliances using R22 refrigerant.

9. Under 40 C.F.R. § 82.152, a “small appliance” is any appliance that is fully manufactured, charged, and hermetically sealed in a factory with five (5) pounds or less of refrigerant, including, but not limited to, refrigerators and freezers (designed for home, commercial, or consumer use), medical or industrial research refrigeration equipment, room air conditioners (including window air conditioners, portable air conditioners, and packaged

terminal air heat pumps), dehumidifiers, under-the-counter ice makers, vending machines, and drinking water coolers.

10. Under 40 C.F.R. § 82.152, “class I” refers to an ozone-depleting substance that is listed in 40 C.F.R. Part 82, Subpart A, appendix A.

11. Under 40 C.F.R. § 82.152, “class II” refers to an ozone-depleting substance that is listed in 40 C.F.R. Part 82, Subpart A, appendix B.

12. Under 40 C.F.R. § 82.152, “substitute” means any chemical or product, whether existing or new, that is used as a refrigerant to replace a class I or II ozone-depleting substance. Examples include, but are not limited to hydrofluorocarbons, perfluorocarbons, hydrofluoroolefins, hydrofluoroethers, hydrocarbons, ammonia, carbon dioxide, and blends thereof. As used in this subpart, the term “exempt substitutes” refers to certain substitutes when used in certain end-uses that are specified in § 82.154(a)(1) as exempt from the venting prohibition and the requirements of this subpart, and the term “non-exempt substitutes” refers to all other substitutes and end-uses not so specified in § 82.154(a)(1).

13. Under 40 C.F.R. § 82.152, “refrigerant” means, for purposes of 40 C.F.R. Part 82, Subpart F, any substance, including blends and mixtures, consisting in part or whole of a class I or class II ozone-depleting substance or substitute that is used for heat transfer purposes and provides a cooling effect.

14. Under 40 C.F.R. § 82.152, “disposal” means the process leading to and including: (1) the discharge, deposit, dumping or placing of any discarded appliance into or on any land or water; (2) the disassembly of any appliance for discharge, deposit, dumping or placing of its discarded component parts into or on any land or water; (3) the vandalism of any appliance such that the refrigerant is released into the environment or would be released into the environment if

it had not been recovered prior to the destructive activity; (4) the disassembly of any appliance for reuse of its component parts; or (5) the recycling of any appliance for scrap.

15. Under 40 C.F.R. § 82.154(a), no person maintaining, servicing, repairing, or disposing of appliances may knowingly vent or otherwise release into the environment any refrigerant or substitute from such appliances, with certain exceptions not relevant to this matter.

16. Under 40 C.F.R. § 82.155(b), the final processor—i.e., persons who take the final step in the disposal process (including but not limited to scrap recyclers and landfill operators) of a small appliance, MVAC, or MVAC-like appliance—must either:

(1) Recover any remaining refrigerant from the appliance in accordance with 40 C.F.R. § 82.155(a); or

(2) Verify using a signed statement or a contract that all refrigerant that had not leaked previously has been recovered from the appliance or shipment of appliances in accordance with 40 C.F.R. § 82.155(a). If using a signed statement, it must include the name and address of the person who recovered the refrigerant and the date the refrigerant was recovered. If using a signed contract between the supplier and the final processor, it must either state that the supplier will recover any remaining refrigerant from the appliance or shipment of appliances in accordance with 40 C.F.R. § 82.155(a) prior to delivery or verify that the refrigerant had been properly recovered prior to receipt by the supplier.<sup>1</sup>

17. Under 40 C.F.R. § 82.155(b)(2)(ii), the final processor must notify suppliers of appliances that refrigerant must be properly recovered in accordance with 40 C.F.R. § 82.155(a) before delivery of the items to the facility. The form of this notification may be signs, letters to suppliers, or other equivalent means.

18. Under 40 C.F.R. § 82.155(b)(2)(iii), if all refrigerant has leaked out of the appliance, the final processor must obtain a signed statement that all the refrigerant in the

---

<sup>1</sup> In the Preamble to the original rule and in revisions to 40 C.F.R. Part 82 Subpart F, EPA described under what circumstances a contract was appropriate and when a disposer should use a signed statement: “EPA notes here that a contract is appropriate for businesses to streamline transactions in cases where they maintain long-standing business relationships. A contract would be entered into prior to the transaction, such as during the set-up of a customer account, not simultaneously with the transaction. A signed statement is more appropriate for one-off transactions between the supplier and the final processor.” 81 Fed. Reg. 82272, 82309 (Nov. 18, 2016).

appliance had leaked out prior to delivery to the final processor and recovery is not possible.

“Leaked out” in this context means those situations in which the refrigerant has escaped because of system failures, accidents or other unavoidable occurrences not caused by a person’s negligence or deliberate acts such as cutting refrigerant lines.

19. Under Section 113(a)(3) of the CAA, 42 U.S.C. § 7413(a)(3), the Administrator of EPA may issue an order requiring compliance to any person who has violated or is in violation of any requirement or prohibition of Title VI - Stratospheric Ozone Protection, 42 U.S.C. § 7671-7671q. The Administrator has delegated this authority to the Director of the Enforcement and Compliance Assurance Division.

20. The Administrator of EPA may require any person who is subject to any requirement of the CAA to make reports and provide information required by the Administrator under Section 114(a)(1) of the CAA, 42 U.S.C. § 7414(a)(1). The Administrator has delegated this authority to the Director of the Enforcement and Compliance Assurance Division.

### **Findings**

21. Cohen owns and/or operates scrap recycling facilities (Facilities) at the following locations:

- a. 1797 Valley Street, Dayton, Ohio (Valley Street Facility);
- b. 105 Black Street, Hamilton, Ohio (Hamilton Facility);
- c. 4538 Kellogg Ave, Cincinnati, Ohio (Kellogg Facility);
- d. 5300 Vine Street, Cincinnati, Ohio (Moskowitz Facility);
- e. 5038 Beech Street, Cincinnati, Ohio (Norwood Facility);
- f. 12175 Reading Road, Sharonville, Ohio (Sharonville Facility);
- g. 13229 Dixie Highway, Walton, Kentucky (Walton Facility); and
- h. 5101 Farmersville-West Carrollton Road, Miamisburg, Ohio (West Carrollton Facility)

22. Cohen is a corporation, with a place of business at 1520 Fourteenth Avenue, Middletown, Ohio.

23. Cohen is a “person” within the meaning of 40 C.F.R. § 82.152.

24. At its Facilities, Cohen accepts for recycling and disposal “small appliances” within the meaning of 40 C.F.R. § 82.152, that contain or once contained ozone depleting substances or substitutes.

25. At this time, at all Facilities except the Moskowitz facility, Cohen accepts for recycling and disposal “MVACs” within the meaning of 40 C.F.R. § 82.152, that contain or once contained ozone depleting substances or substitutes.

26. The ozone depleting substances or substitutes contained or once contained in the small appliances and MVACs Cohen accepts for recycling are “refrigerants” within the meaning of 40 C.F.R. § 82.152.

27. Cohen’s recycling of small appliances and MVACs as described in paragraphs 24 and 25 constitutes “disposal” within the meaning of 40 C.F.R. § 82.152.

28. As a person who disposes of small appliances and MVACs that contain or once contained refrigerants, Cohen is subject to requirements at 40 C.F.R. Part 82, Subpart F.

29. In March 2019, EPA conducted inspections at Cohen’s Facilities to assess compliance with Section 608 of the CAA, 42 U.S.C. § 7671g, and 40 C.F.R. Part 82, Subpart F. During its inspections, EPA noted that Cohen (1) did not recover refrigerant from appliances, nor use signed statements or contracts verifying refrigerant recovery from appliances; (2) had confusing and conflicting signage regarding Cohen’s acceptance of appliances; and (3) had appliances on-site with cut refrigeration lines from which refrigerant had not been recovered.

30. Cohen failed either to recover refrigerants from appliances during scrap recycling, or to verify that refrigerants had been recovered by using a signed statement or contract, at its Facilities, in violation of 40 C.F.R. § 82.155(b).

31. Cohen failed to notify suppliers of appliances that refrigerant must be properly recovered in accordance with 40 C.F.R. § 82.155(a) before delivery of the items to, at least, its Hamilton, Kellogg, and Walton facilities, in violation of 40 C.F.R. § 82.155(b)(2)(ii).

32. On June 28, 2019, EPA issued to Cohen a Finding of Violation (FOV) alleging that it violated the regulations for the Protection of Stratospheric Ozone by failing to meet the requirements of 40 C.F.R. Part 82, Subpart F at its Facilities.

33. On July 31, 2019, representatives of Cohen and EPA discussed the June 28, 2019 FOV (FOV conference).

34. At the FOV conference, Cohen agreed to fully implement a program they had previously initiated to properly recover refrigerant and/or verify proper refrigerant recovery for small appliances and MVACs at its Facilities.

#### **Compliance Program**

35. By the effective date of this Order, at each of its Facilities, Cohen must achieve, demonstrate and maintain compliance with 40 C.F.R. Part 82, Subpart F including, but not limited to, the requirements described in paragraphs 36 - 42 below for any small appliance, MVAC, or MVAC-like appliance that it receives at its Facility. Cohen must also take the actions in paragraphs 43 - 46 by the dates specified in each paragraph.

36. Cohen may only accept small appliances, MVACs, or MVAC-like appliances with intact refrigerant lines provided it uses refrigerant recovery to recover any remaining refrigerant in accordance with § 82.155(a).

37. Cohen must have the refrigerant recovered by a properly trained individual. If that individual is an employee of Cohen, Cohen will ensure that the individual is properly trained to use the refrigerant recovery equipment.

38. If the individual recovering refrigerant is an employee of Cohen or refrigerant is recovered at a Cohen Facility, Cohen must either send the recovered refrigerant or verify that it will be sent to an EPA-certified entity for reclamation or destruction.

39. Cohen must not accept small appliances, MVACs, or MVAC-like appliances with cut or dismantled refrigerant lines if it knows or has reason to know that the refrigerant has not been properly recovered in accordance with 40 C.F.R. § 82.155(a).

40. Cohen must only accept small appliances, MVACs, or MVAC-like appliances with cut or dismantled refrigerant lines if its supplier can certify, using the verification statement (which meets the requirements of 40 C.F.R. § 82.155(b)(2)) included as Attachment 1 to this Order, that the refrigerant was properly recovered. For suppliers with whom Cohen has had a long-standing business relationship, this requirement may be satisfied by Cohen entering into the contract (which meets the requirements of 40 C.F.R. § 82.155(b)(2)) included as Attachment 2 to this Order.

41. By the effective date of this Order, Cohen must notify its suppliers in writing that it will not accept small appliances, MVACs, or MVAC-like appliances with cut or dismantled refrigerant lines, unless the suppliers can certify that the refrigerant was properly recovered in accordance with 40 C.F.R. § 82.155(a) prior to cutting or dismantling the refrigerant lines using the verification statement included as Attachment 1 to this Order or the contract included as Attachment 2 to this Order.

42. For the duration of this Order, Cohen must retain copies of receipts for all refrigerant it collects and sends to another company for reclamation or destruction. Cohen must also document the number of small appliances, MVACs, or MVAC-like appliances it rejects, the date the appliance was rejected, and the reason for rejecting the item(s).

43. Within 60 days of the effective date of this Order, Cohen must develop and follow a written refrigerant management plan that incorporates the provisions of paragraphs 36 through 42. Cohen must provide training on the refrigerant management plan to all employees and contractors that play any role with the contracting, purchasing, accepting, handling, or processing of small appliances, MVACs, or MVAC-like appliances. Cohen will keep a record of such training for the duration of this Order.

44. Within 60 days of the effective date of this Order, Cohen must provide EPA with:

- a. documentation that it purchased refrigerant recovery equipment and has an individual trained in recovering refrigerant or has contracted the services of an individual qualified to perform refrigerant recovery, pursuant to paragraphs 37-38;
- b. proof of its compliance with the notice requirements of paragraph 41; and
- c. A copy of its written refrigerant management plan required by paragraph 43.

45. Within 30 days after the end of each of the four six-month periods following the effective date of this Order, Cohen must submit the following to EPA:

- a. any completed verification statements and contracts used since submittal of the previous report (or, for the first submittal, since the effective date of this Order), pursuant to paragraph 40; and
- b. A copy of the records required to be kept by paragraph 42.

46. Cohen must send all reports required by this Order by electronic mail to [r5airenforcement@epa.gov](mailto:r5airenforcement@epa.gov) and [topinka.natalie@epa.gov](mailto:topinka.natalie@epa.gov). If you are unable to send a report to these addresses due to email size restrictions or other problems, use these email addresses to make additional arrangements for transmission of the report.

### **General Provisions**

47. Cohen consents to the transmission of this Order by e-mail at the following e-mail addresses: jdedario@cohenusa.com and whayes@fbtlaw.com.

48. This Order does not affect Cohen's responsibility to comply with other federal, state, and local laws.

49. This Order does not restrict EPA's authority to enforce the CAA and its implementing regulations.

50. Failure to comply with this Order may subject Cohen to penalties of up to \$101,439 per day for each violation under Section 113 of the CAA, 42 U.S.C. § 7413, and 40 C.F.R. Part 19.

51. The terms of this Order are binding on Cohen, its assignees and successors. Cohen must give notice of this Order to any successors in interest prior to transferring ownership and must simultaneously verify to EPA, at the above address, that it has given the notice.

52. Cohen may assert a claim of business confidentiality under 40 C.F.R. Part 2, Subpart B, for any portion of the information it submits to EPA. Information subject to a business confidentiality claim is available to the public only to the extent allowed by 40 C.F.R. Part 2, Subpart B. If Cohen fails to assert a business confidentiality claim, EPA may make all submitted information available, without further notice, to any member of the public who requests it. Emission data provided under Section 114 of the CAA, 42 U.S.C. § 7414, is not entitled to confidential treatment under 40 C.F.R. Part 2, Subpart B. "Emission data" is defined at 40 C.F.R. § 2.301.

53. This order is not subject to the Paperwork Reduction Act, 44 U.S.C. § 3501 *et seq.*, because it seeks collection of information by an agency from specific individuals or entities as part of an administrative action or investigation.


54. EPA may use any information submitted under this Order in an administrative, civil judicial, or criminal action.

55. Cohen agrees to the terms of this Order. Cohen waives any remedies, claims for relief, and otherwise available rights to judicial or administrative review that it may have with respect to any issue of fact or law set forth in this Order, including any right of judicial review under Section 307(b) of the CAA, 42 U.S.C. § 7607(b).

56. This Order is effective on the date of signature by the Director of the Enforcement and Compliance Assurance Division. This Order will terminate two years from the effective date, provided that Cohen has complied with all terms of the Order throughout its duration.

**Cohen Brothers, Inc.**

5/19/2020  
Date

  
Ken Cohen, President  
Cohen Brothers, Inc.

**United States Environmental Protection Agency**

---

Michael D. Harris  
Director  
Enforcement and Compliance Assurance Division  
U.S. Environmental Protection Agency, Region 5